

United States
Circuit Court of Appeals
For the Ninth Circuit.

E. V. WINTERMOTE, Trustee of the Estate of
BLUMAUER LUMBER COMPANY, a Cor-
poration, Bankrupt,

Appellant,

vs.

T. H. MACLAFFERTY,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the Western District of Washington,
Western Division.

Filed

JAN 20 1916

F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

RAYMOND J. McMILLAN, Esquire, Bank of California Building, Tacoma, Washington, and
ERNEST K. MURRAY, Esquire, Bank of California Building, Tacoma, Washington,

Attorneys for the Trustee, E. V. Wintermote, and Appellant.

VAN M. DOWD, Esquire, Fidelity Building, Tacoma, Washington,

Attorney for the Appellee W. T. MacLafferty. [1*]

[Title of Court and Cause.]

Stipulation as to Record on Appeal.

Whereas, in the above-entitled proceedings the trustee, E. V. Wintermote, did on the 20th day of December, 1915, duly file in the District Court of the United States for the Western District of Washington an assignment of errors, a petition for appeal and a citation, which said appeal was allowed by order of the District Court upon said day,

NOW, THEREFORE, it is hereby stipulated that the record to be certified to this court by the clerk of the United States District Court for the Western District of Washington on said appeal shall consist of the following:

1. This stipulation.
2. Proof of claim of T. H. MacLafferty.
3. Withdrawal of attorney.

*Page-number appearing at foot of page of original certified Record.

4. Objections of trustee to claim of T. H. MacLafferty.
5. Transcript of testimony taken at hearing before referee.
6. Order of referee allowing claim and overruling objections.
7. Petition for review, omitting exhibit "A," and order therefor.
8. Referee's certificate of review. [2]
9. Order affirming referee's order.
10. Assignment of errors.
11. Petition for appeal and order thereon.
12. Citation.

It is further stipulated and agreed that there may be omitted from the foregoing in each case the title of the court, the title of the cause and all verifications and indorsements.

Dated, Tacoma, Washington, December 20th, 1915.

RAYMOND J. McMILLAN,

E. K. MURRAY,

Attorneys for Trustee-Appellant.

VAN M. DOWD,

Attorney for Claimant-Respondent.

(Filed Dec. 21, 1915.) [3]

Proof of Claim of T. H. MacLafferty.

At Tenino, in the county of Thurston, and District aforesaid, on the 1st day of October, 1915, came T. H. MacLafferty and made oath and says: That the bankrupt above named was at the time of the commencement of the proceedings in bankruptcy herein, and still is, justly and truly indebted to this deponent

in the sum of \$1,477.78. That the consideration of said debt is for salary earned for services rendered the above-named bankrupt as general manager, within six months prior to the commencement of the proceedings herein, and at the rate of \$300.00 per month, and for which deponent claims a lien and priority of payment under the laws and statutes of the State of Washington.

That no part of said debt has been paid; and there are no set-offs or counterclaims to the same, and this deponent has no security therefor other than the right of lien as aforesaid. No judgment has been recovered for said account and no note received therefor. This claim is an amendment to the claim filed herein on the 16th day of October, 1914, by this deponent, and is filed in the place and stead of said claim.

Deponent hereby appoints and constitutes E. K. Murray, of Tacoma, Washington, his attorney to act for him in all matters with reference to this claim.

T. H. MacLafferty.

Subscribed and sworn to before me this 1st day of October, 1915.

[Seal]

P. C. KIBBE,

Notary Public in and for the State of Washington,
Residing at Tacoma.

(Filed Oct. 4, 1915.) [4]

[Title of Court and Cause.]

Notice [of Withdrawal of Attorney].

To the Honorable R. F. LAFFOON, Referee in
Bankruptcy.

Please take notice that I hereby withdraw as attorney for T. H. MacLafferty, of Tenino, Washington, who has filed a claim in this proceeding for the sum of \$1,477.78, as a lien and priority claim.

E. K. MURRAY,
Attorney.

(Filed Dec. 14, 1915.) [5]

[Title of Court and Cause.]

Objections to Claim of T. H. MacLafferty.

Comes now E. V. Winternome, the trustee herein, and objects to the claim of T. H. MacLafferty filed herein on the 2d day of October, 1915, for the sum of \$1,477.78, in so far as the same purports to be a lien claim against the property of the above-named bankrupt, and in so far as the same purports to be a claim entitled to priority of payment, for the reason that said claimant was the secretary and the general manager of the above-named bankrupt, and was a stockholder thereof, and for the reason that said claim does not state facts sufficient to constitute a lien against the property of the above-named bankrupt or to constitute a claim entitled to priority of payment, within the meaning of the bankruptcy act

or of the laws of the State of Washington.

E. V. WINTERMOTE,
Trustee.

RAYMOND J. McMILLAN,
E. K. MURRAY,

Attorneys for Trustee.

(Filed Dec. 17, 1915.) [6]

[Title of Court and Cause.]

Transcript of Testimony.

At Tacoma, Washington, in said District, on the 17th
day of December, A. D. 1915.

Before Hon. R. F. LAFFOON, Referee in Bank-
ruptcy.

Present: E. K. MURRAY, Atty. for Trustee.

VAN M. DOWD, Atty. for MacLafferty.

T. H. MacLAFFERTY, Witness. [7]

[Testimony of T. H. MacLafferty, for Claimant.]

Mr. T. H. MacLAFFERTY, being first duly sworn
on oath, testified as follows:

Direct Examination by Mr. MURRAY.

Q. You are the claimant here? A. I am.

Q. In what capacity were you employed by the
bankrupt company prior to the bankruptcy?

A. I was employed as superintendent of the opera-
tions at Tenino and manager of the mill there.

Q. In what business was the bankrupt engaged?

A. In the manufacture of lumber.

Q. Shingles? A. No.

Q. They had a wood-working plant?

(Testimony of T. H. MacLafferty.)

A. Yes, sir.

Q. Of what did your duties as superintendent and manager consist?

A. They consisted of the general operation of the plant, that is almost everything. We had no general foreman under me to handle the different operations and the more difficult parts I handled myself, such as keeping machinery in operation, inspecting machinery, etc. Any work that required a little better skill than the men I had hired as mechanics could do.

Q. You had charge of the office? A. Yes, sir.

Q. You had a bookkeeper and stenographer?

A. Yes.

Q. No other office help? A. No, sir.

Q. You had no mill foreman? A. No. [8]

Q. Was there not somebody over the men?

A. Not in the sawmill. We have a shipping clerk.

Q. Have you a yard foreman?

A. More of a shipping clerk than anything else.

Q. A woods foreman? A. Yes, sir.

Q. Did you have any foreman in charge of the planing mill?

A. Just in charge of the machines.

Q. You had general supervision of the entire operations? A. Yes, sir.

Q. You had to do considerable physical labor in repairing machines that broke down did you not?

A. Most of my time was occupied in that class of work.

Q. What salary did you receive as manager?

(Testimony of T. H. MacLafferty.)

A. Three hundred dollars a month.

Q. Was that by a vote of the board of trustees?

A. Well, yes.

Q. Who fixed the salary of the other employees?

You? A. Mostly.

Q. You employed the other men? A. Yes, sir.

Q. Were you the secretary of the company?

A. Yes, I suppose I was.

Q. One of the directors?

A. I was at one time.

Q. Did you own any stock?

A. Up to within sixteen or eighteen months before the bankruptcy proceedings.

Q. What became of it?

A. I turned it over to Mr. Blumauer. I was to receive a certain salary and ten per cent of the stock. That went on until the firm was incorporated. I just turned over the 10 per cent of [9] stock. He wanted to get a loan from the Seattle National Bank. To do it he had to have my stock. He turned it over to them. It was understood that I was not to go personally on any paper of the concern. When he wanted the stock, I turned it back to him. He agreed to raise my wages one hundred dollars a month. That is, from two hundred to three hundred.

Q. That extra one hundred dollars was given in place of your ten per cent of stock?

A. Yes, sir.

Q. There was no further meeting to elect a new secretary? A. No.

Q. You continued in that office and signed the papers?

(Testimony of T. H. MacLafferty.)

A. As far as there was any necessity for it.

Cross-examination by Mr. VAN M. DOWD.

Q. Did you employ any traveling salesmen?

A. No, I done that all myself.

Q. Did your work take you in the mill every day?

A. Every day except when I was out of town.

Q. About what percentage of the days was actually required in the supervision of the mill?

A. That would vary, sometimes I would probably work seventy-two hours straight. Whenever there was a breakdown, that was a most important part of my work, to take care of it.

Q. Were any of the foremen's salaries fixed by Blumauer? A. I think not.

Redirect Examination by Mr. E. K. MURRAY.

Q. What was the capacity of the mill?

A. As high as ninety thousand feet a day.

Q. It would not average that, would it?

A. Yes. [10]

DOWD.—You don't mean it will average that?

A. Oh, no, that was the maximum. It would average from sixty to sixty-five thousand feet a day.

MURRAY.—You stated that you made a lot of repairs of machinery. Was it because you were the most handy man around there?

A. I was employed because I was able to take care of things. A mill in the country has to have a master mechanic. That was why I was employed there.

Q. You received your salary as general superintendent?

A. I received a salary. I don't know what you would call it for.

(Testimony of T. H. MacLafferty.)

Q. You were employed as general manager and you did what you thought had to be done and you disposed of your own time?

A. Well, to a very great extent, yes. I was general manager as far as the managing of the plant went.

Q. Mr. Blumauer consulted you at all times, did he not? A. Yes.

Q. There was nobody directing your movements around the mill, was there?

A. Only Mr. Blumauer. If he saw anything he wanted changed, he would change it.

Recross-examination by VAN M. DOWD.

Q. If you had been employed as an office man of the company, would it have been necessary to employ a master mechanic?

A. Oh, yes, it would have been necessary. Most country plants do so. They also employ a mill foreman. I did that man's work myself, too.

Witness excused. [11]

[Title of Court and Cause.]

**Order [of Referee] Overruling Objections of
Trustee.**

This matter having heretofore come on for hearing on the objections of E. V. Wintermote, the trustee herein, to the claim of T. H. MacLafferty, filed herein for the sum of \$1,477.78, in so far as said claim purports to be a lien claim or claim entitled to priority of payment, and the court having heard and fully considered the evidence introduced in behalf

of said trustee and said claimant, and having rendered its oral decision in open court,

Now, on motion of said claimant's attorney, it is ORDERED that the objections of said trustee to said claim, be, and the same are hereby in all respects overruled, and said claim allowed as a lien claim in this proceeding for the sum of \$1,477.78.

Dated Tacoma, Washington, December 17th, 1915.

R. F. LAFFOON,

Referee in Bankruptcy.

(Filed Dec. 17, 1915.) [12]

[Title of Court and Cause.]

Petition for Review and Order Therefor.

To the Honorable R. F. LAFFOON, Referee in Bankruptcy.

The petition of E. V. Wintermote, the trustee herein, respectfully represents:

That on the 17th day of December, 1915, an order, a copy of which is hereunto annexed, marked exhibit "A," and made a part hereof, was made and entered herein. That such order was and is erroneous in that it overrules the objections of your trustee to the claim of T. H. MacLafferty, filed herein for the sum of \$1,477.78, in so far as said claim purports to be a lien claim or claim entitled to priority of payment.

WHEREFORE your trustee feeling aggrieved because of such order prays that the same may be reviewed as provided in the Bankruptcy Law of 1898

and General Order XXVII.

E. V. WINTERMOTE,

Trustee.

(Verified.)

(Filed Dec. 17, 1915.)

The above review is hereby granted. December 17th, 1915.

R. F. LAFFOON,

Referee in Bankruptcy. [13]

[Title of Court and Cause.]

Referee's Certificate on Review.

To the Hon. EDWARD E. CUSHMAN, District Judge:

I, R. F. Laffoon, the referee in bankruptcy in charge of this proceeding, do hereby certify:

That, in the course of such proceeding, an order, a copy of which is annexed to the petition hereinafter referred to, was made and entered on the 17th day of December, 1915.

That, on the 17th day of December, E. V. Wintermote, the trustee in such proceeding, feeling aggrieved thereat filed a petition for a review, which was granted.

That a summary of the evidence on which such order was based is as follows:

The claimant, T. H. MacLafferty, filed his amended proof of claim herein on the 4th day of October, 1915, claiming the sum of \$1,477.78 as due him for salary earned as general manager of the bankrupt company within the six months next prior to the

bankruptcy herein at the rate of \$300 per month, and claims priority of payment therefor under section 1149 of Remington & Ballinger's Code of the State of Washington, and subsection B-5 of section 64 of the Bankruptcy Act of 1898; to which claim the trustee has filed exceptions and objections upon the ground that the claimant was the secretary and the general manager of the bankrupt, and was a stockholder thereof, and for the further reason that the claimant does [14] not state facts sufficient to constitute a lien against the property of the bankrupt, or to constitute a claim entitled to priority of payment within the meaning of the Bankruptcy Act or of the Laws of the State of Washington. Upon a hearing had before the referee on December 17, upon the examination of the claimant under oath, it appears that he was the general manager of the company and acted as such during the six months preceding the inception of the bankruptcy proceedings herein; that his salary was fixed at \$300 per month and that he is entitled to his claim of \$1,477.78 being a balance of his salary yet unpaid; that he was the secretary of the bankrupt company but not a stockholder during the time for which he claims priority of payment. It further appears from such examination that his services as general manager extended to, and included much detail work in overseeing and directing the operations of the mill, repairing and adjusting of machinery, and the employment of the labor and directing the sales. Upon the said hearing, the referee was of the opinion that the claimant was entitled to have his said claim allowed

and paid as a priority claim under the said section 1149 of Remington & Ballinger's Code of the State of Washington, and that it came within the rule of the Johnson Creek Lumber Company #1771, and the Chehalis River Lumber & Shingle Company #1655 of the files of this court, and as determined in said causes. Wherefore, the order herein complained of.

The question to be determined on this review is whether or not the claimant herein is entitled to priority of payment under said section 1149 Remington & Ballinger's Code, and Section 64, B-5 of the Bankruptcy Act of 1898.

I hand up for the information of the Judge, the following papers:

1. The record book of this proceeding.
2. The certificate herein.
3. The petition for review. [15]
4. The order complained of.
5. The proof of claim as filed.
6. The objections of said claim.
7. Transcript of testimony.
8. Withdrawal of attorney.
9. All other papers filed with me herein which are pertinent to this review.

Dated, this 17th day of December, A. D. 1915.

Respectfully submitted,

R. F. LAFFOON,
Referee in Bankruptcy. [16]

[Title of Court and Cause.]

Order Affirming Referee's Order.

This matter having heretofore come on for hearing on the petition of E. V. Wintermote, the trustee herein, for review of the order of the referee, dated December 17th, 1915, allowing the claim of T. H. MacLafferty, filed herein for the sum of \$1,477.78, as a lien claim, and overruling the objections of the trustee thereto, and the Court having heard and fully considered the arguments of counsel for said trustee and said claimant, and having rendered its oral decision in open court,

Now, on motion of said claimant's attorney, it is ORDERED that the order of the referee aforesaid, dated December 17th, 1915, allowing the claim of T. H. MacLafferty for the sum of \$1,477.78 as a lien claim, and overruling the objections of the trustee thereto, be, and the same is hereby affirmed, to which said trustee excepts and his exceptions are allowed.

Dated Tacoma, Washington, December 20th, 1915.

EDWARD E. CUSHMAN,

U. S. District Judge.

(Filed Dec. 21, 1915.) [17]

[Title of Court and Cause.]

Assignment of Errors.

Comes now E. V. Wintermote, trustee and appellant, and files the following assignment of errors.

First. That the United States District Court for the Western District of Washington erred in con-

cluding that the statutes of the State of Washington providing for priority of payment to labor claimants in insolvency proceedings were not supplanted by the provisions of the Bankruptcy Act of 1898 dealing with the same subject.

Second. That the Court erred in concluding that the claimant, T. H. MacLafferty, who was the secretary, one of the directors and a stockholder of the bankrupt corporation, was entitled to a lien under and by virtue of the laws of the State of Washington, for his services rendered to said bankrupt as its general manager.

Third. That the Court erred in finding that the proof of claim filed by the claimant T. H. MacLafferty stated facts sufficient to entitle him to a lien or priority of payment.

Fourth. That the Court erred in making its order affirming the order of the referee allowing the claim of T. H. MacLafferty as a lien and priority claim and overruling the objections of the trustee thereto.

[18]

WHEREFORE the trustee prays that the order of the District Court of the United States for the Western District of Washington be reversed and that this cause be remanded for such further proceedings as are consistent with law and justice.

RAYMOND J. McMILLAN,

E. K. MURRAY,

Attorneys for Trustee.

(Filed Dec. 21, 1915.) [19]

[Title of Court and Cause.]

**Petition for Appeal to Circuit Court of Appeals and
Order Therefor.**

To the Honorable EDWARD E. CUSHMAN, Judge
of the United States District Court for the
Western District of Washington:

E. V. Wintermote, the trustee in the above-entitled proceedings, conceiving himself aggrieved by the final order entered in this proceeding on the 20th day of December, 1915, affirming the order of the referee to whom this proceeding was referred allowing the claim of T. H. MacLafferty as a lien and priority claim for the sum of \$1,477.78 and overruling the objections of said trustee thereto, does hereby petition for an appeal from said order to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that his appeal may be allowed and said order reversed and a citation granted directed to said T. H. MacLafferty, claimant, commanding him to appear before the United States Circuit Court of Appeals for the Ninth Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the records, proceedings and evidence in said proceeding, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

E. V. WINTERMOTE,

Trustee.

RAYMOND J. McMILLAN,
E. K. MURRAY,

Attorneys for Trustee. [20]

[Order Allowing Appeal.]

The foregoing appeal is hereby allowed.

Dated, December 21st, 1915.

EDWARD E. CUSHMAN,
U. S. District Judge.

(Filed Dec. 21, 1915.) **[21]**

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify the foregoing and attached to be a true, full and correct transcript of the papers and proceedings in the case of Blumauer Lumber Company, a corporation, Bankrupt, No. 1663, lately pending in this court, as required by the stipulation of counsel filed in this cause, as the originals thereof appear on file in this court, at Tacoma, in the District aforesaid.

I further certify and attach thereto the original citation issued in this cause.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office, by and on behalf of the appellant herein, for making the record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, to wit:

Clerk's fees (Sec. 828 R. S. U. S.) for making record, certificate and return, 31 folios @ 15¢.....	4.65
Clerk's certificate to transcript, 2 fo. @ 15¢..	.30
Seal to said certificate20

ATTEST my hand and the seal of the United States District Court, at Tacoma, in this District, this 20th day of December, A. D. 1915.

[Seal]

FRANK L. CROSBY,

Clerk.

By E. C. Ellington,
Deputy Clerk. [22]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. —.

Citation on Appeal.

In the Matter of BLUMAUER LUMBER COMPANY,

Bankrupt.

United States of America,—ss.

The President of the United States to T. H. MacLafferty, Greeting:

You are hereby cited and admonished to appear in the United States Circuit Court of Appeals for the Ninth Circuit in the City of San Francisco, California, on the 21st day of January, 1916, pursuant to the appeal duly obtained and filed in the Clerk's office of the District Court of the United States, for the Western District of Washington, Southern Division, wherein you as claimant are ap-

peltee and E. V. Wintermote, trustee, is the appellant, to show cause, if any there be, why the final order in said appeal mentioned should not be reversed and corrected, and why speedy justice should not be done to the parties in that behalf and to do and receive what may appertain to justice to be done in the premises.

WITNESS the Honorable EDWARD E. CUSHMAN, United States Judge for the Western District of Washington, on the 21st day of December, 1915.

[Seal]

EDWARD E. CUSHMAN,

U. S. District Judge. [23]

Due service of within citation admitted this 21st day of December, 1915.

VAN M. DOWD,
Attorney for Claimant-Appellee.

In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Blumauer Lbr. Co., Bankrupt. Citation on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Dec. 21, 1915. Frank L. Crosby, Clerk. By _____, Deputy.

[Endorsed]: No. 2718. United States Circuit Court of Appeals for the Ninth Circuit. E. V. Wintermote, Trustee of the Estate of Blumauer Lumber Company, a Corporation, Appellant, vs. T. H. MacLafferty, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Western Division.

Filed December 27, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk. [24]